

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

JOSEPH SMITH, #1830217

§

VS.

§

CIVIL ACTION NO. 2:17cv262

LAUREN PARISH, ET AL.

§

ORDER OF DISMISSAL

Petitioner Joseph Smith, an inmate currently confined at the Michael Unit within the Texas Department of Criminal Justice (TDCJ), proceeding *pro se*, filed this Writ of *Quo Warranto* action, which was construed as a habeas corpus action alleging purported violations of his constitutional rights concerning purported improprieties with his criminal prosecution. The case was referred to the United States Magistrate Judge, the Honorable Roy S. Payne, for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On May 18, 2018, Petitioner filed a motion to amend, (Dkt. #18), his initial pleading. The Court granted the motion, (Dkt. #20), ordering Petitioner to file his amended pleading stating specific facts, explaining how his constitutional rights were violated, and how he was allegedly harmed. No amended pleading was ever filed. Therefore, on October 21, 2019, Judge Payne issued a Report, (Dkt. #21), recommending that Petitioner's case be dismissed, without prejudice, for his failure to comply with the order to amend. Petitioner has filed timely objections, (Dkt. #22). His objections are difficult to decipher and seem to fail to respond to the crux of the issue: The failure to file an amended pleading, as Petitioner requested.

The court has conducted a careful *de novo* review of record and the Magistrate Judge's proposed findings and recommendations. See 28 U.S.C. §636(b)(1) (District Judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or

recommendations to which objection is made.”). Upon such *de novo* review, the court has determined that the Report of the United States Magistrate Judge is correct, and Petitioner’s objections are without merit.

The court further notes that *quo warranto* actions are brought by the State or Government—not by an individual. See *Superior Oil Co. v. City of Port Arthur*, 726 F.2d 203, 205 n.1 (5th Cir. 1984); see also *Wallace v. Anderson*, 18 U.S. 291, 292 (1820) (Chief Justice Marshall explaining that “a writ of *quo warranto* could not be maintained except at the instance of the Government, and as this writ was issued by a private individual, without the authority of the Government, it could not be sustained...”). Accordingly, it is

**ORDERED** that the Report of the United States Magistrate Judge, (Dkt. #21), is **ADOPTED** as the opinion of the Court. Petitioner’s objections, (Dkt. #22), are overruled. Further, it is


**ORDERED** that Petitioner’s case is **DISMISSED**, without prejudice, for the failure to comply with an order of the court. Moreover, it is

**ORDERED** that, to the extent one is required, Petitioner is **DENIED** a certificate of appealability *sua sponte*. Finally, it is

**ORDERED** that any and all motions which may be pending in this civil action are hereby **DENIED**.

**So Ordered this**

Dec 27, 2019

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE